IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 20929 OF 2001

Date: 25.11.2005

BETWEEN:

K. Tilak Kumar

.... PETITIONER

And

1. The A.P. Wakf Board, rep. by its Chief Executive Officer, Hyderabad, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 20929 OF 2001

ORDER:

The petitioner approached the second respondent for construction of building with cellar, ground floor + two floors in the property bearing Plot No.78-C Door No.47-3-25, Dwarkanagar, Visakhapatnam, admeasuring 532.79 sq. yards, which he allegedly purchased under a registered sale deed 17.2.2000. The second respondent by proceedings dated 10.8.2000 sanctioned building permission. It is alleged that when the petitioner was making construction, the second respondent issued notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') on 3.10.2001 directing the petitioner to remove the unauthorized construction made by the petitioner within 24 hours from the date of receipt of the notice. Aggrieved by the same, present writ petition is filed.

It is the case of the petitioner that he obtained municipal permission, and having come to know that third respondent recommended for construction of ground + two

floors, made an application on 9.10.2000 for construction of third and fourth floors for residential purpose. The second respondent did not pass any orders nor rejected the permission within thirty days. Therefore, he proceeded with the construction in accordance with Section 437 of the Act. When the second respondent issued a notice under Section 637 dated 10.9.2000, which was received by the petitioner on 14.9.2000, he removed the temporary construction of cellar. Again the respondents issued notices alleging unauthorized construction of third and fourth floors on 2.12.2000 and 12.12.2000. Therefore, the petitioner filed W.P.No.23822 of 2000 before this Court. By order dated 5.12.2000 this Court disposed of the said writ petition directing the petitioner to submit explanation to the show cause notice and further directed the Commissioner of the respondent Corporation to consider the representation and pass appropriate orders. Though the petitioner submitted explanation, without considering the same, the second respondent issued the impugned order.

The second respondent filed a detailed counter affidavit denying the allegations made in the writ affidavit. It is alleged that the petitioner made construction of third, fourth and fifth floors unauthorisedly without there being any valid permission, and he has deviated the building permission with regard to Floor Space Index (FSI) by making construction at 1:1.92 FSI as against 1:1.10, and that he did not leave the statutory setback areas and coverage area and exceeded the ceiling height of the building. It is further stated that when the Corporation issued notice under Section 452 (1) of the Act, the petitioner submitted explanation. Even without waiting for consideration of the explanation, he filed O.S.No.709 of 2001 on the file of the Court of the II Additional Senior Civil Judge and also sought *ad interim injunction* in I.A.No.465 of 2001. When the Civil Court ordered notice on the same, and the Interlocutory Application was coming up for arguments on 4.10.2001 and 5.10.2001, the petitioner filed the present writ petition making all false allegations.

Though a counter affidavit is filed by the second respondent, the petitioner has not chosen to file any reply affidavit. By reading the counter affidavit it becomes clear that the petitioner filed the present writ petition when he failed to get appropriate interlocutory orders in the Civil Court in O.S.No.709 of 2001 and I.A.No.465 of 2001. The petitioner has suppressed this fact, and he has not revealed this factum in his affidavit. Applying the principle *suppressio veri suggestio falsi* the writ petition is liable to be dismissed. Further, the petitioner constructed third, fourth and fifth floors unauthorisedly, and did not comply with the bye-laws and conditions of building permit in the matter of setbacks coverage and height of the building. Therefore, this is a fit case where this Court should not interfere with the action taken by the second respondent.

The Writ Petition, for the above reasons, is accordingly dismissed and the interim orders stand vacated. No costs.

(**V.V.S. RAO, J.**)

25th November, 2005

Js.